

**ST. HELIER WATERFRONT AREA:
ACQUISITION OF POSSIBLE INTEREST**

**Lodged au Greffe on 28th July 1998
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (1) to refer to their Act dated 3rd February 1998 in which the States -
 - (a) approved the acquisition on behalf of the public from Les Pas Holdings Limited of all such interest (if any) as that company might have in the areas of foreshore and reclaimed land situated to the west of Albert Pier and shown coloured red on drawing 583/2;
 - (b) authorised the Planning and Environment Committee, in exercise of the powers conferred by Article 4 of the Island Planning (Jersey) Law 1964, as amended, to acquire the said interest (if any) on behalf of the public by compulsory purchase in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended for the purposes stated; and
- (2) to note that -
 - (a) on 22nd July 1998 the Royal Court, rejecting every ground of challenge advanced by the company, made an order vesting the said interest (if any) in the Public;
 - (b) there exists a further potential, though disputed, interest, namely that of the Seigneur of the Fief de la Fosse, the nature of which interest is more fully set out in paragraphs 7 to 11 of the Policy and Resources Committee's report dated 21st July 1998 which accompanies this Proposition; and
 - (i) to approve the acquisition on behalf of the public from the Seigneur of the Fief de la

Fosse of all such interest (if any) as he might have in the areas of foreshore and reclaimed land situated to the west of Albert Pier and shown coloured red on drawing 583/2;

- (ii) to authorise the Planning and Environment Committee, in exercise of the powers conferred by Article 4 of the Island Planning (Jersey) Law 1964, as amended, to acquire the said interest (if any) on behalf of the public by compulsory purchase in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended for the purposes of giving effect to the development of the St. Helier Waterfront area in accordance with the said States' decisions and the redevelopment and modernisation of the areas that are already developed;
- (iii) to authorise the Attorney General and the Greffier of the States to pass on behalf of the public any contract which it might be found necessary to pass in connexion with the acquisition of the said interest (if any); and
- (iv) to authorise the payment or discharge of any expenses incurred in connexion with the acquisition of the said interest (if any) from the Planning and Environment Committee's capital vote of credit - "Acquisition of Land - Major Reserve" (Vote No. C0904).

POLICY AND RESOURCES COMMITTEE.

NOTE: The comments of the Finance and Economics Committee will follow.

Report

St. Helier Waterfront Area - West of Albert

Compulsory Purchase of Seigneurs' Interest

1. On 3rd February 1998, the States adopted Proposition 2 of 1998 of the Policy and Resources Committee and decided to authorise the Planning and Environment Committee to acquire by compulsory purchase such interest as Les Pas Holdings Limited might have in areas of foreshore and reclaimed land situated to the west of the Albert Pier and shown coloured red on drawing number 583/2 ("the compulsory purchase area"). A copy of the proposition and of the report which accompanied it is attached to this report. The plans, which were appended to P2/98 have not been reproduced again here. They are available for scrutiny in the States Bookshop, Morier House, and will be on display in the States on the day of debate.
2. Following that decision the Greffier of the States, in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, served three successive notices, the first calling upon the company to declare its interest and what it would accept for it, the second informing the company what the Planning and Environment Committee was prepared to offer for the interest, and the third notifying the company that the Greffier of the States intended to apply to the Royal Court for an order vesting the alleged interest in the public of the Island.
3. The application for a vesting order was made on 29th May 1998. On that day the company sought to challenge the decision of the States by way of judicial review. It was refused leave to do so by the Court but was granted leave to contest the making of the vesting order. The Waterfront Enterprise Board ("WEB") was at the same time given leave to intervene in the proceedings. The application for a vesting order was then adjourned to 4th June 1998.

4. On 4th June 1998, the company applied for an adjournment. The application was unsuccessful.
5. On 5th June 1998, the company challenged two of the members of the Court on the ground of bias. The Court rejected the allegation of bias, but decided that a Commissioner with two new jurats would sit at the hearing. The Court also fixed a timetable for the further hearing of the objection.
6. The company applied to the Court of Appeal for leave to appeal from the orders of the Royal Court of 29th May and 4th and 5th June 1998, seeking judicial review of the decision of the States of the 3rd February, 1998, or alternatively an adjournment of the hearing of the application for a vesting order. These applications were heard by the Court of Appeal on 22nd, 23rd and 24th June 1998, and were unsuccessful.
7. The contested hearing of the application for the vesting order took place on 8th, 9th and 10th July 1998, before the Royal Court. Judgment was delivered on 22nd July 1998. In that judgment, the Royal Court rejected every challenge which had been made by Les Pas Holdings Limited to the decision of the States of the 3rd February 1998, and made the vesting order. During the hearing of the application for the vesting order, however, it became apparent that there might be a further potential interest to acquire as set out below.
8. The present Seigneur of the Fief de la Fosse, Advocate Richard Arthur Falle, acquired the fief from the Dame of the Fief, Mrs. Carole Louise Malet de Carteret, née Chiswell by contract dated 14th March 1986. By deed of gift dated 27th January 1989, he purported to convey to Les Pas Holdings Limited all and such rights as he might have in the areas of foreshore specified in the deed of gift.
9. The Seigneur and the company both claim that (a) by acquiring the fief the Seigneur acquired the ownership of the foreshore adjoining the fief, and (b) by conveying to the

company all and such right as he had in the foreshore he conveyed to the company his ownership of the foreshore. In answer to the first notice served on the company in the compulsory purchase proceedings, which calls upon the company to state what interest it has in the foreshore, Advocate Falle, writing as advocate for the company, replied that the company owned the foreshore.

10. There is however a contention, albeit one challenged by the Seigneur and the company, that even if (which is denied by the public) the Seigneur owned the foreshore (a) he could not validly transfer a right to the foreshore independently of the ownership of the fief and (b) the company, being a company, was not competent to acquire either the fief or any rights appertaining to the fief.
11. It follows from the above that if when the litigation is finally concluded the Court holds - (a) that the Seigneur owned the foreshore and (b) that he could not transfer it to the company, the result would be that immediately after the purported deed of gift of 27th January 1989, the Seigneur would have remained in ownership of the foreshore.
12. There is a further contention, that is, that even if that were the case the Seigneur's right to the foreshore would have become prescribed on the expiration of forty years from the date of a lease passed in 1950 by the Crown to the public of the foreshore of the Island. If that contention is correct the Seigneur's claim, even if he had one, would have become prescribed in 1990. The effect of prescription is, however, in dispute between the parties to the litigation and as with all the other matters in dispute it is not possible to say with certainty what the ultimate decision of a Court would be.
13. It will be clear from the foregoing that to place matters beyond doubt the acquisition of such interest as the company may have should be accompanied by the acquisition of such interest as the Seigneur may have. In addition to what is set out in this report, the more detailed reasons for the need to acquire any potential adverse interest in the compulsory

purchase areas is as set out in the report which accompanied Proposition 2 of 1998.

14. This will have no effect upon the compensation (if any) which may be payable by the public at the end of the day. If it is found that the Seigneur did own the foreshore, and that some compensation is payable in respect of it, that compensation will be payable either to the Seigneur or to the company but cannot be payable to both.

21st July 1998

**ST. HELIER WATERFRONT AREA:
ACQUISITION OF CONTESTED INTEREST**

**Lodged au Greffe on 20th January 1998
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (1) to refer to their Act dated 10th November 1992 in which, in pursuance of Article 3 of the Island Planning (Jersey) Law 1964, as amended, they approved Map No. 3-92 as the development plan for the St. Helier Waterfront area from West Park to the Dicq; their Act dated 12th December 1995 appointing the Waterfront Enterprise Board Limited as the development agency for that area; their Act dated 14th May 1996 designating twelve vergées of land, as shown on drawing No. 515/1, for leisure and recreation use; and their Act dated 22nd July 1997 designating areas 1, 2 and 3, as shown on drawing No. 558/1 for use for residential purposes;
- (2) to note that the public's ownership of areas of foreshore, which include areas of reclaimed land situated to the west of the Albert Pier, St. Helier, has been challenged by action before the Royal Court brought by Les Pas Holdings Limited ('Les Pas'), and that the action has the effect of frustrating the immediate development of part of the St. Helier Waterfront area in accordance with their said decisions and would be an obstacle to the partnership of public and private finance in the future redevelopment and modernisation of the developed areas; and
 - (a) to approve the acquisition on behalf of the public from Les Pas of all such interest (if any) as Les Pas may have in the areas of foreshore and reclaimed land situated to the west of the Albert Pier and shown coloured red on drawing No. 583/2; and to authorise the Greffier of the States to sign the said drawing on behalf of the States;
 - (b) to authorise the Planning and Environment Committee, in exercise of the powers conferred by

Article 4 of the Island Planning (Jersey) Law 1964, as amended, to acquire the said interest (if any) on behalf of the public by compulsory purchase in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended, for the purposes of giving effect to the development of the St. Helier Waterfront area in accordance with the said States decisions and the redevelopment and modernisation of the areas that are already developed;

- (c) to authorise the Attorney General and the Greffier of the States to pass on behalf of the public any contract which it might be found necessary to pass in connexion with the acquisition of the said interest (if any);
- (d) to authorise the payment or discharge of any expenses to be incurred in connexion with the acquisition of the said interest (if any) from the Planning and Environment Committee's capital vote of credit - "Acquisition of Land - Major Reserve" (Vote No. C0904).

POLICY AND RESOURCES COMMITTEE.

NOTE: The Finance and Economics Committee supports this proposition.

Report

In this report -

“the Waterfront area” means the St. Helier Waterfront area as set out in proposition P.123 of 1992 and map No. 3-92, which were adopted and approved respectively by the States on 10th November, 1992, (see paragraph 5).

“the western area” means the areas of foreshore, now reclaimed land, from the Albert Pier westward as far as West Park acquired by the public from the Crown by contracts dated 16th December 1983, 27th January, 1989, and 6th January 1995, respectively (see paragraphs 1 to 4 inclusive).

“the contested areas” means the areas of foreshore and reclaimed land ownership of which is claimed by Les Pas Holdings Limited (see paragraphs 11 to 14 inclusive) as shown on drawing No. 583/1A, which accompanies this report.

“the compulsory purchase area” means as much of the western area as is claimed by Les Pas Holdings Limited as shown on drawing No. 583/2, which accompanies this report.

“the south-west area” means an area of foreshore to the south-west of the compulsory purchase area, ownership of which is claimed by Les Pas Holdings Limited.

1. On 16th December 1983, the Receiver General acting on behalf of the Crown sold to the public areas of seabed and foreshore lying to the south-south-west and southwest of the Esplanade and of the road linking the Esplanade with the Albert Pier and to the west and southwest of the Albert Pier together with certain breakwaters erected by the public. The area sold was identified in the contract of sale and on a plan 327/4D attached to the contract.
2. On 27th January 1989, the Receiver General acting on behalf of the Crown sold to the public areas of seabed lying to the west of the Albert Pier and to the southwest of the areas acquired on

16th December, 1983. The area sold was identified in the contract of sale and on a plan MS.253.

3. On 6th January 1995, the Receiver General acting on behalf of the Crown sold to the public areas of seabed and foreshore lying to the south of the Esplanade, to the west and the southwest of the areas acquired on 16th December 1983, and to the north and northwest of the areas acquired on 27th January 1989. The area sold was identified in the contract of sale and on a plan 439/1 attached to the contract.
4. The areas of seabed and foreshore sold by the contracts of 16th December 1983, 27th January 1989, and 6th January, 1995, are together referred to in this report as ‘the western area’.
5. On 10th November 1992, the States adopted proposition P.123 of 1992 and in pursuance of Article 3 of the Island Planning (Jersey) Law 1964, as amended, approved map No. 3-92 as the development plan for the St. Helier area, subject however to the States’ approving the site of the new housing to the west of the Albert Pier and the marina at Havre des Pas. This area includes the western area and adjoining areas eastward to Le Dicq. The western area and the adjoining areas are together referred to in this report as ‘the Waterfront area’.
6. In the report supporting proposition P.123 of 1992 emphasis was placed upon the need for a comprehensive development strategy for the whole of the Waterfront area - thus in paragraph 1.5 it was said -

“In considering the contents of this report and its recommendations, it is worth remembering why the Plan is necessary and what it is intended to do. The original Brief drew attention to the fact that there are major forces for change in the Waterfront area, that the area presents many challenges and opportunities, and that there is a danger of irrevocable damage occurring if things are allowed to happen by default or without concern for their relationship to other activities. Major and complex issues will only be resolved satisfactorily within the context of a

co-ordinated development framework, which, while not cast in tablets of stone, is nevertheless sufficiently robust to provide certainty and guidance for the community at large and for those people who will be expected to invest in the area.’’

The report analysed the issues then before the States under the following heads -

- provision for port users
- long-term port arrangements
- future yacht marina provision
 - west
 - east
 - in the Old Harbour
- uses of the Albert Pier Reclamation site
- land reclamation and tipping
- pedestrian and vehicular accessibility
- interim opportunities for visual improvements
- the need for a Plan.

7. On 14th May 1996, the States adopted proposition P.57 of 1996 and designated 12 vergées of land, as shown on drawing No. 515/1, for leisure and recreation use to enable the construction of a leisure pool and associated facilities, public open space and car parking on the land. On 22nd July 1997, the States adopted proposition P.88 of 1997, and designated areas 1, 2 and 3 shown on drawing No. 558/1 for use for residential purposes.

8. Reclamation work has begun and has been completed on the western area.
9. The Waterfront Enterprise Board Limited (referred to in this report as ‘‘W.E.B.’’) has been confirmed as the development agency of the States for the Waterfront area for the purpose of developing the area in accordance with development plans approved by the States.
10. Work is proceeding on the first development projects for the western area and the next stages of the development are planned to include housing, a leisure complex, a car park, a marina park, open space and the construction of a four/five star conference hotel adjoining the marina. To achieve these projects work is about to start on the provision of infrastructure, on the realignment of La Route du Port Elizabeth, on the internal roads and on the promenades. Ancillary and consequential works to extend and rearrange the lorry park have been completed. Other works to enhance the terminal area and provide further trailer and car parking can be expected following the construction of warehouse No. 3 within the lorry park. Some of these works will involve private finance.
11. On 6th January 1995, an action *pour exhiber titre* (‘‘to prove title’’) was brought in the Royal Court by Les Pas Holdings Limited calling upon the Crown and the public to justify their respective titles to areas of foreshore and of reclaimed land specified in the action which extend from Payn Street to Le Dicq.
12. In the proceedings which have followed the bringing of the action of 6th January 1995, Les Pas Holdings Limited has claimed to be the owner of the contested areas by virtue of a deed of gift dated 27th January 1989, by which the Seigneur of the Fief de la Fosse conveyed to the company all and such right as the Seigneur might have in the areas of foreshore specified in the deed of gift. The areas of foreshore and of reclaimed land claimed by Les Pas Holdings Limited are referred to in this report as ‘‘the contested areas’’. The contested areas include much of the Waterfront area and of the western area. The parts

of the western area claimed by Les Pas Holdings Limited are referred to in this report as "the compulsory purchase area" and are shown on drawing No. 583/2.

13. It is the contention of Les Pas Holdings Limited that the Seigneur of the Fief de la Fosse owned as part of the Fief the foreshore bordering the Fief and that by conveying to the company all and such right as he might have in those areas of foreshore he thereby conveyed ownership of those areas of foreshore to the company.
14. To summarise the foregoing, Les Pas Holdings Limited is in effect claiming to be the owner of the contested areas.
15. The legal advice which has been given to the Crown and to the Public is that this claim is without merit. The proceedings have been and are being strenuously defended. It is however inevitable that the legal proceedings will be protracted and allowing for all possible appeals that they will last for a matter of years.
16. The known existence of a challenge to the title of the public to the compulsory purchase area is stultifying the development, redevelopment and modernisation of the compulsory purchase area because the very fact that the challenge exists raises uncertainty in the minds of potential private sector developers or partners in development and of their financial backers/supporters and will continue to do so until such time as the action is successfully resolved. If development is to proceed forthwith rather than on some unknown future date when the legal proceedings are successfully resolved it is imperative to remove this uncertainty.
17. On 8th April 1997, the States adopted proposition P.52 of 1997 and agreed in principle to grant to the private developer who was to construct a leisure complex at the western area, which was to be leased by the public to the developer, an indemnity clause in respect of the claim by Les Pas Holdings Limited to ownership of the land. In the event it has not proved possible to agree such an indemnity, nor would it have covered future

tenants and/or occupiers of the leisure complex. Furthermore, on 22nd July 1997, the States adopted proposition P.88 of 1997 and zoned further land affected by the claim for housing purposes. This was not covered by the original in principle decision to indemnify the developer and in any event it would not be possible to construct an acceptable form of indemnity which would satisfy individual house owners and their funders. The Policy and Resources Committee has therefore subsequently been advised that it has not proved possible to agree a satisfactory form of indemnity which would resolve all these problems.

18. In May of this year representatives of Les Pas Holdings Limited invited the Committee to discuss on a "without prejudice" basis the merits or otherwise of establishing a process in parallel with the pending litigation which might lead in due course to an out of Court resolution of the matters in dispute. The Committee was disappointed that the discussions proved to be unproductive and States members were notified of the outcome. Consequently the Committee now feels that in order to progress the development, redevelopment and modernisation of the western area as agreed by the States the only appropriate way of resolving the difficulties expeditiously and without injustice to the company is for the States to exercise the powers conferred upon them by Article 4 of the Island Planning (Jersey) Law 1964, as amended, to acquire such interest as the company may have in the compulsory purchase area.
19. It is of course the contention of the advisers to the States that the company has no such interest. Formal legal advice has however been given that compulsory purchase proceedings may properly be taken to acquire "such interest as the company may have" and may be conducted on the basis that it is the contention of the States that the company has no interest. The offer of compensation which the statute requires the acquiring authority to make to the claimant would reflect this contention.
20. The procedure laid down by the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended, provides that after the States have decided to acquire land by compulsory purchase

the Greffier of the States must serve three notices in succession. The first calls upon the claimant to state the interest which it has in the land and the price it would be prepared to accept for it; the second, if there is no response to the first or if the response claims an unreasonable amount, states the amount which the acquiring authority is prepared to pay for the interest and calls upon the claimant to accept the offer within a specified time; if the offer is not accepted by the claimant the third notice gives the claimant eight days' notice of an intention to apply to the Royal Court for a vesting order.

21. After the expiry of eight days from the service of the third notice, the Greffier of the States can apply to the Royal Court for an order vesting the land in the public. The practical effect of such an order would be to place beyond doubt the public's ownership of the affected area and thus to remove all the uncertainty which may impede the development, redevelopment and modernisation of the compulsory purchase area. Compensation is then determined separately by an Arbitration Board appointed by the Royal Court. Timescales in the assessing of compensation could have no effect upon title; from the date of the vesting order all possible challenge to the public's title would cease to exist.
22. Taking into account the statutory periods for serving the notices, it would by adhering to the minimum timescales be possible to obtain a vesting order within two months of the decision by the States to acquire the interest of the company.
23. Because in compulsory purchase proceedings it would be the contention of the States that Les Pas Holdings Limited had no interest in the contested areas and the contention of the company that it owned them, it would still be necessary to determine the question of who had owned the foreshore immediately prior to the vesting order, but that determination could take place after the vesting order and the outcome would have no effect upon the public's title to the compulsory purchase area.

24. There are different ways in which the question of ownership prior to the making of the vesting order could be determined once the vesting order had been made -

- (a) The Royal Court could be asked to constitute the Arbitration Board as similar as possible to a court. When the litigation takes place before the Royal Court it will be necessary for it to be heard by a Commissioner appointed under the Royal Court (Jersey) Law 1948, as amended; the Royal Court could be asked to appoint as Chairman of the Arbitration Board a person of the same status as would be appointed Commissioner for litigation purposes. The Arbitration Board could then be asked to determine the question of ownership.
- (b) The parties could agree to stay the proceedings before the Arbitration Board pending the resolution of the Court proceedings.
- (c) The Arbitration Board could be asked to state a special case on the question of ownership as a point of law for the opinion of the Royal Court.
- (d) The Arbitration Board could refuse to receive submissions on whether or not the land was owned by Les Pas Holdings Limited. It could then publish an award which assumed either that the land was or that the land was not owned by Les Pas Holdings Limited and remit that award to the Royal Court in the form of a special case for the decision of the Royal Court.
- (e) The parties could ask the Arbitration Board to remit the question of ownership to the Royal Court.

Failing agreement between the parties the ultimate decision will be one for the Arbitration Board subject to any overriding decision of the Royal Court.

25. The advantage of the acquisition by compulsory purchase of "such interest as the company may have" in the compulsory

purchase area is that it will remove the check on the development, redevelopment and modernisation of that area. It will make the States liable to pay compensation for whatever the company's interest is in due course determined to be. If that interest is non-existent, as the States have asserted in the legal proceedings, there will be nothing to pay. If it is found that the company does have any legal interest in the compulsory purchase area, the States will be liable to pay compensation for it, but that would in any event be the effective result if the litigation were to go against the States, as the States would then have either to give up the compulsory purchase area or to buy the company out. It cannot be unfairly prejudicial to the company, because if the company has an interest it will be compensated for it, and if it does not it cannot be prejudiced by the acquisition by the public of an interest which the company does not have.

26. It is of course difficult at this stage to estimate what compensation the States would be liable to pay if the company does have any legal interest in the compulsory purchase area. The Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended, provides that the value of the land compulsorily acquired shall, subject to various rules as to assessment set out in the Law, be taken to be the amount which the land might have been expected to realise if sold on the open market by a willing seller on the date of the Vesting Order. That price obviously depends upon many factors. To date, the only major expenditure which has been spent upon the compulsory purchase area is public money and in compulsory purchase proceedings brought in pursuance of Article 4 of the Island Planning (Jersey) Law 1964, as amended, any increase in the value of the land acquired as a result of the expenditure of public monies shall be deducted from the value of the land by the Arbitration Board when assessing compensation.
27. The same argument will not be available in respect of private money expended on the compulsory purchase area. If the compulsory purchase area is not compulsorily acquired now, and private monies are spent upon the area, and it is at a later stage decided that the company has a legal interest in the land,

the company will acquire the benefit of the development, and if bought out will be entitled to insist upon the value of the land as developed in so far as the development was funded by private monies. If the company's interest is acquired at this stage, and it is at a later stage decided that the company has a legal interest in the land, the company will not be entitled to claim as part of the compensation the value of the development which has been funded by private money after the date of the vesting order.

28. Proposition P.171 of 1997, which was to be debated on 9th December 1997, was deferred at the request of the President of the Policy and Resources Committee to enable consideration to be given to correspondence received from the representatives of Les Pas Holdings Limited in particular a letter dated 28th November 1997, which was copied to all States members and which is reproduced in the Appendix to this report.
29. That letter distinguishes between different areas now shown on drawing No. 583/3, which accompanies this report, and which are distinguished by the letter as follows -
 - (1) areas presently undergoing development;
 - (2) areas which are intended to be developed but for which development permission has not yet been received;
 - (3) areas already developed;
 - (4) areas which it is not intended to develop.

It should be noted that category (2) comprises areas the use of which has been designated by the States under Article 3 of the Island Planning (Jersey) Law 1964, as amended, but for which development permission may or may not have been received, category (3) comprises areas which have already been developed but are to be redeveloped and modernised, and category (4) areas which it is not proposed to acquire by compulsory purchase.

30. As to the first two categories, for the reasons set out above, it is the view of the Policy and Resources Committee that powers of acquisition should be taken to acquire the interest which the company claims in these areas -
- (1) to provide for orderly planning in, and the comprehensive development of land;
 - (2) to ensure that the land is used in a manner serving the best interests of the community;
 - (3) to improve the general amenities of the Island and in particular the Waterfront area.
31. It has been suggested by Les Pas Holdings Limited that powers of compulsory acquisition are unnecessary because that company is ready and willing to develop the land. However -
- (1) development of the land by Les Pas Holdings Limited now would only be possible by them capitalising upon large investment by the States in the reclamation of the area;
 - (2) the most expeditious development of the land is likely to take place if carried out under the aegis of the Waterfront Enterprise Board Limited as agents of the States;
 - (3) preliminary proposals put forward by Les Pas Holdings Limited do not in the main accord with the States' decisions as to the development of the land in the best interests of the community;
 - (4) development of the area which is presently claimed by Les Pas Holdings Limited is best carried out in conjunction with adjacent reclaimed foreshore in respect of which Les Pas Holdings Limited makes no claim.
32. Turning to the areas already developed as shown on drawing No. 583/3, these comprise principally the roads and the Elizabeth Terminal. As stated in paragraph 10 above, work is

about to start on the provision of infrastructure, part of which lies within these areas and on the realignment of La Route du Port Elizabeth which also lies within these areas. Ancillary and consequential works (consequential because the old lorry park has been reshaped and a retaining wall erected to screen it from the new development) to extend and rearrange the lorry park have been completed but other works to enhance the terminal area and provide further trailer and car parking can be expected following the construction of warehouse No 3 within the lorry terminal. Some of these works will involve private finance.

33. Additional considerations also apply. As already pointed out above, the States approved proposition P.123 of 1992 upon the basis of a comprehensive plan for the whole Waterfront area. If any measure of doubt were to prevail in respect of the ownership of any part of the land, then developers' confidence in the whole project is liable to be weakened. Moreover, it is inappropriate for there to be any doubt as to the ownership of the Island's principal harbour facility as this may inhibit long-term development plans. Accordingly it is the view of the Policy and Resources Committee that acquisition of any interest which Les Pas Holdings Limited may have in the developed parts of the Waterfront area is also justified -
- (1) to provide for orderly planning in, and comprehensive development of the Waterfront area;
 - (2) to ensure that the Waterfront area is used in a manner serving the best interests of the community; and
 - (3) to preserve and allow the improvement of the general amenities of the Island.
34. As to the last category what is proposed is the acquisition by compulsory purchase of such interest as the company may have in the compulsory purchase area. The compulsory purchase area does not extend further to the southwest than what is now the southern boundary of the Elizabeth Terminal and harbour and thus comprises only areas which have been, are being or are to be developed. If the company is at the end of the litigation

found to have had an interest in the foreshore, the result will be that the company will be left with an area of foreshore to the southwest of the Elizabeth Terminal and Harbour. Under compulsory purchase procedures in the United Kingdom if it is proposed to acquire part of land in the same ownership, and the acquisition of part only of the land would leave a quantity of land of less than half an acre, and the owner has no adjoining land with which the remaining land may be merged, the owner may require the acquiring authority to acquire the remaining land. The purpose of this provision is to ensure that an owner of land is not left with useless residual land. Jersey law contains no equivalent provision, and in fairness to Les Pas Holdings Limited the Committee would have been prepared to recommend to the States the acquisition of the company's interest in the south west area which it is not proposed to develop so that if the company were ultimately to be successful in the litigation it would not be left with a useless area of residual land. Advocate Falle's letter has, however, made it clear that the company does not wish such interest as it may have in the south west area to be acquired, and that area has moreover not been sold by the Crown to the public. The Committee accordingly makes no proposals as to acquisition of the south west area.

35. The proposition does not ask the States to authorise the Planning and Environment Committee to negotiate with Les Pas Holdings Limited for the acquisition at an agreed price of such interest as the company may have in the compulsory purchase area before proceeding by compulsory purchase. Such an authorisation is generally included in propositions seeking the approval of the States for the exercise of compulsory purchase powers. It is however not a requirement of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, as amended, and is only included as a matter of practice as the States would not wish to exercise compulsory purchase powers in any case where an agreement can be reached. In the present case there have already been the discussions referred to in paragraph 18 which made it clear that the claimants' view of a reasonable price is a very long way from that which could be regarded as reasonable from the point of view of the public, not least

because of the fundamental difference between the States and the company in their views as to the true ownership of the foreshore.

C O P YLETTER TO THE CHIEF ADVISER**APPENDIX****BOIS & BOIS**

Advocate and Solicitor

Richard A Falle, BA (Oxon) Advocate
Daniel Young, LLB, Solicitor

Our Ref: RAF:jc:RECL.008;97cor27.11

Bond Street Chambers,
1 & 2 Bond Street,
P.O. Box 429
St. Helier,
Jersey, JE4 5QR,
Channel Islands.Tel: (01534) 601010
Fax: (01534) 601011

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Colin Powell, Esq., OBE, MA (Cantab),
Chief Adviser to the States,
Cyril Le Marquand House,
P.O. Box 140,
ST. HELIER.

Dear Mr. Powell,

I am instructed by my client company Les Pas Holdings Limited to write to you in connection with the report and proposition currently before the States for the acquisition by compulsory purchase from the company of its proprietary interest in “*the contested areas*” shown in drawing number 583/1 West and South-West of the Albert Pier.

The proposition refers to proposed developments on the *contested areas* and notes that the company’s action currently before the Royal Court “*has the effect of frustrating the immediate development of part of the St. Helier Waterfront area in accordance with their [the States] said decisions*”.

On the premise that my client company’s action is indeed frustrating the immediate development of this land the proposition as lodged would invoke the powers conferred by Article 4 of the Island Planning (Jersey) Law, 1964 (as amended) to expropriate the company’s interest in **all** the *contested areas* shown on drawing number 583/1.

My client company takes issue with the States on the legality of this proposition. I am not here to comment on my client's interest in the land as a developer, the vices it perceives in the current proposals for development West of the Albert Pier or the frustration which the company has suffered elsewhere on the waterfront in respect of its own development proposals. I decline to comment on advice apparently given to the States to the effect that the Company claim is "*without merit*". That issue is before the Royal Court. I am to confine myself here, to consideration of simple legal principles in the light of this proposition.

This Bailiwick has always accepted the notion of the right to private property. It is fundamental that no person, natural or legal, may be deprived of his property in land except in the public interest and then only subject to the conditions provided for by law. It is perhaps, not inappropriate to say that the machinery for expropriation in this jurisdiction is deficient in the protection offers to the citizen as compared for example, with that afforded by English law. It remains true however, that expropriation even under the existing law of Jersey can never be arbitrary or at the whim of the States. It must be confined to the strict provisions of the law.

It is clear that substantial areas of the land which it is now proposed to acquire compulsorily are in fact, already wholly developed and in settled use. other parts are in the course of development. Of the remainder, some of the areas are not yet the subject of development consents and the residue, that is to say, those areas of foreshore extending beyond the reclaimed and developed areas, is not the subject of development nor likely to be in the future.

The Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, as amended, is, as its title suggests, procedural only and Article 2 of that law entitled "*Application of the provisions of this Law*", expressly so limits it -

"The provisions of this law shall apply only where, by a Law confirmed by Order of Her Majesty in Council (in this Law referred to as a "Special Law"), power is conferred on the States to acquire land by Compulsory Purchase on behalf of the Public in accordance with the provisions of this Law but not otherwise ..."

The Special Law invoked here in the Proposition is the Island Planning (Jersey) Law, 1964 as amended. Article 4 provides -

“Where it appears to the States that any land should be acquired by the Public of the Island for any of the purposes of this Law as set out in Article 2, it shall be lawful for the States to acquire such land by compulsory purchase...”

On any reasonable construction, the only object of the Planning Law relevant to the powers sought under Article 4 in the present circumstances is Article 2(a). This states that the Law was enacted -

“to provide for orderly planning in, and the comprehensive development of land”.

If therefore, Article 2(a) is not in issue, compulsory powers cannot be assumed.

The Report attached to the Proposition is clearly drawn to establish a Public interest case for compulsory acquisition. It turns entirely on the conclusion set out in Paragraph 14 of that Report namely, where it identifies the *“stultifying effect on development of the affected area given the existence of a challenge to the Public’s title”*. That effectively however, would limit the case to those parts of the contested areas which have **not yet been developed**. There is no suggestion, nor, I believe can there be, that **development** of the rest of the contested areas is *“stultified”* by the present proceedings before the Royal Court. These areas are either already fairly developed or are unlikely ever to be the subject of development.

It seems on the evidence of the Report and Proposition that the States are being invited to resolve upon compulsory purchase for which there is no sufficient legal basis and accordingly that any such procedure would be ultra vires the law and an abuse of statutory authority at least in respect of those parts of the contested areas where Article 2(a) clearly does not apply.

With regard to the proposals in the Report under Paragraphs 22 and following it would seem that these procedures are not covered by the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961 as amended and are of their nature, ad hoc. It is not I suggest, open to the acquiring authority except with the agreement of the landowner to order its own procedure by unilateral resolution.

Suppose the States were to proceed notwithstanding the above and in due course an application were made to the Royal Court for a vesting

order in accordance with Article 4(A) of the Compulsory Purchase of Land (Procedure) (Amendment No. 3) (Jersey) Law, 1981. The Court would in that event, be bound under Article 4A(2) to consider strictly whether the *“provisions of this law have been complied with”*. If it were not so satisfied, the Royal Court would refuse to make a vesting order and the whole procedure would fail.

In the circumstances, I would with respect, suggest that the appropriate course is for the States -

- (a) to resume the earlier discussions with my client company mentioned in Paragraph 16 of the Report. That paragraph records *“disappointment”* at the failure of these discussions. I have to say that the Committee’s disappointment was at least matched by that felt by the Directors of my client company. You will know that in those discussions no offer at all was made by the representatives of the States or indeed any constructive suggestion which might have led to settlement; and or
- (b) to withdraw the existing Proposition for amendment which would take account of the matters raised here and at least bring the procedure within the terms of the Law.

I look forward to hearing from you.

Finally, because this letter directly concerns them, and further given the imminence of the proposition, I am instructed to copy it to all the Members of the States.

Yours sincerely,

R.A. FALLE